

FILED
Court of Appeals
Division II
State of Washington
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NO. 50199-6-II
IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION II

In re the Matter of the Guardianship of

JOSIAH K. LEE,

An Incapacitated Person

APPEAL FROM THE SUPERIOR COURT

HONORABLE SCOTT COLLIER AND HONORABLE ROGER
BENNETT

BRIEF OF RESPONDENT

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I. INTRODUCTION AND STATEMENT OF THE CASE

Petitioner on appeal is Wanda Gilbert, the mother of the incapacitated person, Josiah Lee, in Clark County Guardianship cause number #11-4-00112-2. Respondents on appeal are David and Wanda Lee, maternal grandparents of Josiah Lee and his court appointed guardians. Josiah Lee is an adult with developmental disabilities.

On February 11, 2011, David and Wanda Lee, former non-parental custodians of Josiah Lee under Clark County Superior Court cause number 01-3-02110-6, filed a petition seeking to be appointed Josiah's co-guardians.

On April 27, 2011 a hearing was held on the petition for Guardianship before the Honorable Roger Bennett. Michelle Gilbert appeared and testified at this hearing. At the hearing, on the court entered an order appointing David and Wanda Lee as Co-guardians of Josiah Lee. A copy of this order is attached to this reply brief.

2. SUMMARY OF ARGUMENT

This appeal was submitted with an apparent lack of

knowledge of the proper role of the appellate court. This appeal should fail based on the passage of time since the decision of the court, the failure to identify errors of law made by the trial court or to provide a proper record or legal authority on appeal. The notice of appeal filed April 4, 2017 is not timely, is not based on legal authority. This is not an adequate record on appeal. The appeal brief does not identify trial court error based on arguable facts or law.

Several appeal briefs were filed and rejected. This appeal appears to be set out in the brief filed by Michelle Gilbert on October 6, 2017. The appeal questions in assignments of error the original order appointing guardians entered in 2011. Years have passed since the entry of this order. There is no identification of errors in the additional orders appealed, trial court orders denying motions dated March 27, 2017, March 27, 2017 and April 12, 2017. There is no record of objections made to decisions of the trial court in orders dating March 27, 2017, March 27, 2017 and April 12, 2017. Two of these orders, *Order Denying Motion Re Independent Action to Vacate a Fraud Medical Report dated March 27, 2017* and *Order*

denying Motion for Exhibit List Order of Default was Falsified Request to Vacate Cr60 dated April 12, 2017 filed by Appellant as Clerk's Exhibits, do not appear to be final, appealable orders.

3. THE COMMENCEMENT OF THE APPEAL IS NOT TIMELY

A notice of appeal should be filed within 30 days of a court's decision under RAP 5.2. Based on the appellant's brief and Clerk's papers, this appeal appears to be, in part, an appeal from the original order appointing guardian entered on April 27, 2011. This appeal also includes the appeal of two orders denying motions and an order denying petition for modification of guardianship entered by the trial court on March 27, 2017, March 27, 2017 and April 12, 2017.

The date of the Notice of Appeal is April 4, 2017. The date of appeal would be timely as to the March 27, 2017 order but there is no record of the basis of the motion for this order. The Notice of Appeal and brief does not identify errors with respect to the March and April 2017 orders other than a claim that the

adult incapacitated person should be returned to “his mother”.

There is no legal authority for this claim.

An appeal of the original order appointing guardians is not timely. With a few exceptions, an appeal of a trial court decision should be made within 30 days of the entry of the trial court decision. RAP 5.2(a) CR 5(e) and CR 58.

RAP Rule 5.2. Time Allowed to File Notice provides:

*(a) **Notice of Appeal.** Except as provided in RAP rules 3.2(e) and 5.2(d) and (f), a notice of appeal must be filed in the trial court within the longer of (1) 30 days after the entry of the decision of the trial court that the party filing the notice wants reviewed, or (2) the time provided in section (e). Section (e) does not apply in this case.*

4. THE ISSUES ON APPEAL IDENTIFIED BY APPELLANT ARE UNTIMELY AND WITHOUT BASIS

Michelle Gilbert lists her claimed errors as:

1. First Assignment of Error-“Back dating with different dates”
2. Second Assignment of Error-“Section H shows Josiah Lee is not incapacitated.”
3. Third Assignment of Error-“Dr. Philip McGuiness is not a licensed psychologist, he is a pediatric doctor.”

4. Fourth Assignment of Error-“Fraud exhibit falsified signature”

5. Fifth Assignment of Error-“Denied modification to request Josiah back, I’m his mother.”

5. APPELLANTS ASSIGNMENTS OF ERROR #1 THROUGH #4 ARE UNTIMELY

Claims of error #1 through #4 appeals relate to the original order appointing guardian dated April 27, 2011, are not timely and there is no citation to the record or error of law. Appellant provides a transcript of hearing dated Wednesday April 27, 2011. To the extent that the appeal raises claims of error in the original guardianship order, the appeal is untimely. There is no evidence that the entry of the order appointing guardian was not within the sound discretion of the trial judge.

6. ASSIGNMENT OF ERROR #5 HAS NO LEGAL BASIS.

Appellant claims in Assignment of Error #5, that Josiah should be returned to her “as the mother.” It appears that she claims parental custody rights to a disabled adult. She cites no authority for this claim and custodial parental rights do not extend past age 18.

Appellant urges the court in her brief to find that “the guardianship turned out to be irreversible error.” The phrase “Irreversible error” as used here makes no sense. No specific decisions of the judge entering the order are identified and no record of errors of law are provided.

7. THE RECORD ON APPEAL IS NOT ADEQUATE FOR REVIEW

The Notice of Appeal should designate the decision or part of decisions which the party wants reviewed. The Notice of Appeal in this case is unclear. It is not possible to identify the alleged error of the trial court. Appellant states in her Notice of Appeal:

“the plaintiff/petitioner seeks review of Title 11 oral argument on the merits, 11.4 conduct on fraud document of a medical report under the confidential file and a fraud order of default exhibit is false signature done by the other party.”

The record on appeal provided to the Court of Appeals by appellant includes:

- Index
- Transcript of Proceedings, February 27, 2013

- Email from Michelle Gilbert, March 25, 2017
- Letter from Dept #10 to Michelle Gilbert, March 27, 2017
- Order denying Motion for Exhibit List Order of Default was Falsified Request to Vacate Cr60, April 12, 2017
- Order Denying Motion Re Independent Action to Vacate a Fraud Medical Report, March 27, 2017
- Order Denying Motions Re Modify a Guardianship, March 27, 2017

Some of the documents offered by appellant as record on review, including her Email to the court and letter to the court, in addition to constituting improper ex parte contact with the court, are not proper documents for consideration by this court as records on appeal.

Appellant provides a transcript of the April 27, 2011 hearing before Judge Roger Bennett during which she testified and the order appointing guardians was entered. Thus, it appears that the appellant is seeking to review the 2011 order appointing guardian.

They are submitted as part of the Clerk's Record, copies of trial court orders denying motions dated March 27, 2017, March 27, 2017 and April 12, 2017. As to the 2017 orders, there is no record of the basis of the decision on motions which were denied. The issues listed on the notice of appeal do not

designate the claimed errors of the trial court or provide legal citations for errors. The appellate brief does not cite to the record and does not include a clear assignment of error with legal authority.

The appellate court review is designed to review decisions of a trial court made in error.

RAP Rule 5.3.(2) provides

(a) Content of Notice of Appeal. A notice of appeal must....designate the decision or part of decision which the party wants reviewed.

8. THERE IS NO RECORD OF OBJECTION OR OF A CLAIM OF ERROR MADE TO THE TRIAL COURT IN THE RECORD ON APPEAL.

The appellate court should refuse to review claims of error because there is no record or claim of error made to the trial court. As set out in RAP 2.5(a) an appellate court may refuse to review a claim of error that was not raised in the trial court. There is no evidence of objections to specific trial court rulings in this case. RAP 2.5(a) provides:

(a) Errors Raised for First Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court.

9. APPELLANT IMPROPERLY OFFERS NEW EVIDENCE ON APPEAL.

Appellant complains of “fraud” documents in her brief. The court should reject this issue. There is no proof of “fraud”, there was no objection to fraud documents. Appellate court review is based on the *record provided*. There is a strong policy against receiving new evidence on appeal. See RAP 9.11.

10. NO CITATION TO THE RECORD OR TO LEGAL AUTHORITY IS MADE BY APPELLANT

Appellants brief in support of the issues presented for review does not contain citations to legal authority or references to relevant parts of the record.

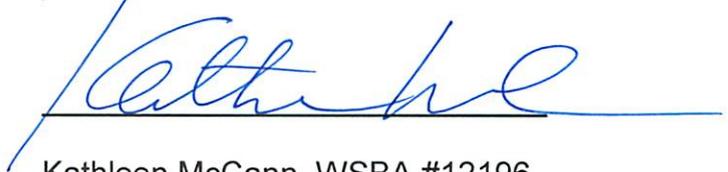
11. REQUEST FOR SANCTIONS FOR FRIVOLOUS APPEAL

Respondent on appeal asks that the court of appeals under RAP 18.9 impose sanctions for frivolous appeal and condition the right to participate in further appeal on compliance with sanctions imposed.

12. CONCLUSION

This Court is respectfully asked to dismiss this appeal, affirm the decisions of the trial court and impose sanctions for frivolous appeal.

Dated this 20 day of December, 2017.



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Attorney for Respondents on Appeal
David & Wanda Lee

LAW OFFICE OF KATHLEEN MCCANN

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